

REMARKS

Claims 18-81 are pending, with claims 18, 25, 42, 59, 60, 61, 64 and 65 being independent. Claims 18, 25, 59 and 60 have been amended and claims 61-81 have been added.

Statement of the Substance of the Interview

Applicant appreciates the courtesies extended to Applicant's representative, Matthew T. Shanley, during the telephonic interview conducted on October 12, 2005. During the interview, Applicant's representative and the Examiner discussed the Examiner's interpretation of the Banko and Kudla references and the foregoing amendments to claims 18 and 60. The Examiner indicated that the foregoing amendments to claims 18 and 60 would raise new issues for consideration and/or search. Accordingly, this response is being submitted concurrently with the filing of a Request for Continued Examination under 37 § 1.114.

Also, as discussed during the interview of October 12, 2005, Applicant submits that the Examiner has not identified in Banko nor Kudla the unique combination of limitations recited in new claims 61-65. Claims 61, 64 and 65 recite subject matter previously presented in claims 22, 29 and 31, respectively. In particular, neither Banko or Kudla describes or suggests a method of cutting that includes aspirating cut tissue through a hollow interior in an inner member, as recited in claims 22 and 61; a cutting instrument that includes the inner member defining an aspiration opening, the aspiration opening being located at a proximal portion of the helical knife, as recited in claims 29 and 64; and a cutting instrument that includes the pitch of the helical channel changing from the distal end to the proximal end, as recited in claims 31 and 65.

Claim Rejections Under 35 U.S.C. § 102 and 35 U.S.C. § 103

Claims 18-24 and 60 have been rejected under 35 U.S.C. § 102(b) as being anticipated by Kudla (U.S. Patent No. 5,203,653) and Banko (U.S. Patent No. 3,732,858). These rejections are respectfully traversed.

Claim 18

Independent claim 18, as amended, recites a method of cutting, including slicing into tough, fibrous tissue with a slicing edge of a helical knife to draw tissue proximally toward a sharp cutting edge, and cutting the tough, fibrous tissue with the sharp cutting edge. The slicing edge extends through an opening at least partially bounded by the sharp cutting edge.

Applicant requests that the rejections of claim 18 over Banko and Kudla be withdrawn.

With respect to Banko, Banko does not describe or suggest slicing into tough, fibrous tissue with a slicing edge of a helical knife. Banko describes the removal of "blood clots and other impurities, including the lens from the eye;" "a biopsy at any portion of the anatomy;" "blood clots or the lens of the eye;" "any object or deposit, such as blood clots, tissue and impurities from vitreous material contained within the eye as well as the removal of part or all of the vitreous or the lens from the eye and its replacement with another material;" and "a blood clot, a growth, such as a tumor, or other impurity in the eye, or any other portion of the body however formed, the lens [sic] of the [sic] eye, healthy, diseased or dead tissue for a biopsy or other reason." See Col. 1, lines 20 through col. 2, lines 4 of Banko. However, Banko does not describe or suggest treating, tough fibrous tissue. Therefore, claim 18 is patentable over Banko.

With respect to Kudla, the Examiner has apparently equated the cutting edge 16 of Kudla with the claimed slicing edge and the relief R3 of Kudla with the claimed sharp cutting edge. However, relief R3 is not a sharp cutting edge, and the cutting edge 16 of Kudla does not extend through an opening at least partially bounded by relief R3. Rather, the relief R3 is a recess which permits additional material to be removed by the cutting edge 16 (col. 3, lines 40-56 of Kudla). Therefore, claim 18 is patentable over Kudla.

Claim 60

Independent claim 60, as amended, recites a method of cutting, including slicing into tough, fibrous tissue with a helical knife that extends through an opening of an outer member. The opening is at least partially bounded by a sharp cutting edge. This is followed by rotating the helical knife to draw the tough, fibrous tissue toward the sharp cutting edge, which is followed by shearing the tough, fibrous tissue between the helical knife and the sharp cutting edge.

As discussed above with reference to claim 18, Banko does not describe or suggest slicing into tough, fibrous tissue. Therefore, claim 60 is patentable over Banko.

As discussed above with reference to claim 18, relief R3 of Kudla is not a sharp cutting edge. Therefore, claim 60 is patentable over Kudla.

Claims 25-43 and 45-60 have been rejected under 35 U.S.C. § 102(b) as being anticipated by Banko (U.S. Patent No. 3,732,858). Claim 44 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over Banko (U.S. Patent No. 3,732,858). These rejections are respectfully traversed.

Claim 25

Claim 25, as amended, recites, in part, a helical knife having an edge configured to slice into tough, fibrous tissue and to draw the tough, fibrous tissue proximally along the helical knife towards a sharp cutting edge. Applicant requests that this rejection be withdrawn because Banko does not describe or suggest at least these features of claim 25.

The Examiner has apparently equated the inner jaw member 42b of Banko having a helical groove 130b to the claimed helical knife, and states the "helical knife (130) would inherently has as [sic] an edge to slide [sic] into tissue to draw the tissue proximally along the helical knife towards the sharp cutting edge" (page 3, paragraph 1 of Final Office Action dated July 13, 2005). However, in Banko, the helical groove 130b is not configured for slicing into tough, fibrous tissue and drawing the tough, fibrous tissue proximally along the helical knife towards a sharp cutting edge. Rather, the helical groove 130b of Banko is only configured to create a shearing action between the inner and outer members (42b, 52b) to cut tissue. Therefore, claim 25 is patentable over Banko.

Claim 59

Claim 59 recites, in part, a helical knife configured to slice into tough, fibrous tissue, to draw the sliced tough, fibrous tissue into an opening, and to shear the sliced tough, fibrous tissue that has been drawn into the opening between the helical knife and a sharp cutting edge.

Applicant requests that this rejection be withdrawn because Banko does not describe or suggest at least these features of claim 59.

Banko does not describe or suggest a helical knife configured to slice into tough, fibrous tissue, to draw the sliced tough, fibrous tissue into an opening and to shear the sliced tough, fibrous tissue between the helical knife and a sharp cutting edge. Rather, the helical groove 130b of Banko is only configured to create a shearing action between the inner and outer members (42b, 52b) to cut tissue. Therefore, claim 59 is patentable over Banko.

Claim 42

Independent claim 42, recites, in part, a helical knife with a V-shaped cross section defining a sharp, slicing edge. Applicant submits that Banko does not describe or suggest at least this feature of claim 42. The Examiner has apparently equated the helical groove 130b of Banko to the claimed helical knife. However, the helical groove 130b of Banko does not have a V-shaped cross section defining a sharp, slicing edge. Rather, the outer edge of the helical groove 130b is relatively blunt or flat, as can be seen in Fig. 10 (and Fig. 12, 130c) of Banko. Therefore, for at least the foregoing reasons, Applicant respectfully requests that the rejection of independent claim 42, and those claims that depend from it, be withdrawn.

Applicant does not acquiesce in the Examiner's characterizations of the art. For brevity and to advance prosecution, however, Applicant may have not addressed all characterizations of the art and reserves the right to do so in further prosecution of this or a subsequent application. The absence of an explicit response by Applicant to any of the Examiner's positions does not constitute a concession of the Examiner's positions. The fact that Applicant's comments have focused on particular arguments does not constitute a concession that there are not other arguments for patentability of the claims. All of the dependent claims are patentable for at least the reasons given with respect to the claims on which they depend.

Applicant submits that all of the claims of the present application should be allowed.

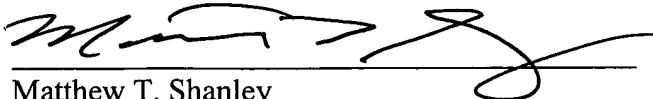
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Enclosed is a \$850.00 check for excess claim fees and a \$120.00 check for the Petition for Extension of Time fee. Please apply any other charges or credits to deposit account 06-1050.

Respectfully submitted,

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